

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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| WARREN RAY PATTERSON, | : | |
| Petitioner, | : | |
| | : | CIVIL ACTION NO. |
| v. | : | 3:03cv1363 (SRU) |
| | : | |
| IMMIGRATION AND | : | |
| NATURALIZATION SERVICE, | : | |
| Respondent. | : | |

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

Warren Ray Patterson (“Patterson”) petitioned this court, pro-se, for a writ of habeas corpus. On August 25, 2003, the court ordered a stay of Patterson’s deportation pending resolution of his petition. The government responded to the petition, arguing that the court lacks jurisdiction to hear Patterson’s claim. On May 17, 2004, the court ruled that it had jurisdiction and asked the government to supplement the record of Patterson’s prior proceedings. The government complied and also filed an additional memorandum of law in support of its motion in opposition to the petition. For the reasons set forth below the government’s motion is granted.

I. Background

On April 9, 1992, Patterson was ordered deported on the grounds that he had two convictions for sale of controlled substances and three convictions for possession of controlled substances. Subsequently, two of the possession convictions were vacated, and Patterson moved to reopen his immigration proceedings on that basis. The motion was granted, and a date for a new deportation hearing was set. On the day of the hearing, Patterson’s lawyer was in attendance, but Patterson was not. The Immigration Judge ordered Patterson deported in absentia and, on June 22, 1998, Patterson

was deported to Jamaica.

On January 12, 2000, Patterson attempted to reenter the United States with a false passport. He was denied admission and paroled into the country for prosecution. Prior to trial for his illegal reentry, Patterson moved to reopen his earlier immigration proceedings, arguing that his lawyer had never informed him of the date of his second hearing. The Immigration Judge denied the motion, and, in October 2000, the BIA dismissed the appeal.

On May 21, 2002, in the District of New Jersey, Patterson was convicted of illegal reentry into the United States in violation of 8 U.S.C. § 1326 and sentenced to 52 months' incarceration.

On August 8, 2003, another removal hearing was held and, on August 28, 2003, the immigration court ordered Patterson deported, pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act ("INA"), as an alien who seeks admission within ten years of the date of a previous deportation or removal under section 240. The immigration court, in reaching its decision, relied on the fact that Patterson had been convicted for illegal reentry. Patterson appealed to the BIA, which, on February 6, 2004, affirmed without opinion the immigration court's decision.

II. Discussion

Patterson argues that his 1998 deportation was improper because his lawyer never notified him of the hearing date. That error, he contends, led to his criminal conviction and to his current order of removal, and so, he must be allowed to reopen that proceeding to undo the harm that has been done him.

The short answer to Patterson's argument is that his claim is moot. Reopening his 1998 immigration proceeding will not avail him because he is subject to a more recent order of removal on

separate grounds. Thus, even were I to grant him relief on his 1998 petition, he would still be deportable because of his 2003 order of removal on the basis of his illegal reentry to the country. When a court cannot grant any effectual relief to a prevailing party then the case is moot. In re Kurtzman, 194 F.3d 54, 58 (2d Cir. 1999).

The longer answer is that, even if Patterson is correct that the source of any injustice done to him is ultimately his initial deportation hearing, a motion to reopen does not, under the circumstances of this case, provide a vehicle for relief. Until he was deported, Patterson could, of course, have filed a petition with this court.¹ Once he had been deported, had reentered the country, and was charged with illegal re-entry, his next option was not – as he has done – to file this petition; he instead should have collaterally challenged his removal order in his criminal proceeding² and, if necessary, pursued the issue on appeal.

The record is unclear whether Patterson attempted to attack his deportation order at trial.³ If he did collaterally attack his removal order, then the District Court for the District of New Jersey ruled

¹ Assuming he had a claim that this court has jurisdiction to hear. See Calcano-Martinez v. I.N.S., 232 F.3d 328, 342 (2d Cir. 2000).

² A collateral attack of an underlying deportation order is permissible in an illegal re-entry proceeding provided the defendant can show: (1) he exhausted any administrative remedies that may have been available to seek relief against the order; (2) the deportation proceedings at which the order was issued improperly deprived him of the opportunity for judicial review; and (3) the entry of the order was fundamentally unfair. 8 U.S.C. § 1326(d).

³ It is even unclear whether Patterson went to trial or pleaded guilty. Of course, if he pleaded guilty then his petition is barred *a fortiori*. United States v. Tejeda-Campusano, 8 Fed. Appx. 71 (2d Cir. 2001) (unpublished summary order) (“The validity of the underlying deportation proceeding may not be challenged after a valid guilty plea has been entered, unless the defects are jurisdictional.”) (citing Lebowitz v. United States, 877 F. 2d 207 (2d Cir. 1989)).

on the merits of his claim of improper removal; if it committed error, Patterson's avenue of appeal was to the Third Circuit. If Patterson did not collaterally attack his removal order, then he missed that opportunity. In either event, the opportunity – whether seized or not – has passed. His conviction for illegal entry led to his current order of removal, and no ruling of mine on the propriety of his initial removal hearing can change that result.

For the aforementioned reasons, Patterson's Petition for Writ of Habeas Corpus (doc. # 1) is DENIED and the Stay of Deportation (doc. # 2) currently in effect is VACATED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 15th day of June 2004.

/s/ Stefan R. Underhill

Stefan R. Underhill

United States District Judge